In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.986 of 1996 (O&M)

.....

Date of decision:2.9.2011

Smt. Mohani Chitkara

.....Appellant

v.

State of Haryana and others

.....Respondents

....

CORAM : HON'BLE MR. JUSTICE MOHINDER PAL

.....

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

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Present: Mr. S.S. Brar, Advocate for the appellant.

Mr. Rajiv Kwatra, Additional Advocate General, Haryana for the respondents.

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Mohinder Pal, J.

This appeal is directed against the judgment and decree dated 06.12.1995 passed by the learned Additional District Judge, Chandigarh. By the impugned judgment, the learned Additional District Judge has set aside the judgment and decree dated 29.10.1987 passed by Sub Judge Ist Class,

Chandigarh. Consequently the suit of the plaintiff for declaration and mandatory injunction was dismissed. Now, the plaintiff is in this Regular Second Appeal before this Court. The appeal filed by the plaintiff was allowed by this Court vide Judgment dated 16-05-2000 vide which the judgment and decree of the First Appellate Court was set aside and that of the trial Court was upheld.

The State of Haryana and others (defendants in the suit) filed Special Leave Petition before the Hon'ble Supreme Court of India against the decision rendered by this Court. The judgment passed by this Court was set aside. The case was remanded back to this Court for fresh decision for compliance of the provisions of Section 100 of the Civil Procedure Code and by framing substantial question of law, if any, involved in the case vide order dated 25.08.2004.

In compliance with the orders of the Hon'ble Supreme Court of India following substantial questions of law arising out of the pleadings of the parties were framed.

> "(i) Whether in facts and circumstances of the case when admittedly the order dated 4.7.1979 (P-15) has set aside in appeal by the competent authority i.e. Govt. on 29.4.81 (P-16) can the subsequent order setting aside the same vide order dated 8.3.82 (P-17) be taken to be valid/legal in spite of the same having been passed at the back of the appellant?
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> (ii) Whether in the facts and circumstances of the case, when no inquiry was held nor show cause notice was given to the appellant before passing adverse order dated 8.3.82 (P-17) nor any

opportunity of being heard, the order dated 8.3.82 was totally arbitrary and unsustainable in the eyes of law.

(iii) Whether in the facts and circumstances of the case the inquiry officer having failed to follow the procedure in holding on inquiry the order of punishments is illegal?

(iv) Whether in the facts and circumstances, the lower appellate Court erred in law in reversing the well reasoned judgment of the trial Court by misreading and misinterpreting evidence brought on record?

(v) That entire approach of the lower appellate Court is illegal and cannot be sustained in the eyes of law?"

The facts of the case necessary for disposal of this appeal are that the appellant-plaintiff was appointed as Junior Lecturer in English and she joined her duties on 30.9.1974 in Government Polytechnic, Sirsa. She remained on extra ordinary leave, medical leave and maternity leave and ultimately failed to join her duties. Ultimately, departmental enquiry was initiated against the plaintiff and her services were terminated vide order dated 04.07.1979. The plaintiff challenged that order through appeal/revision on 05.09.1979 before defendant No.1. Then, plaintiff moved application dated 30.12.1980 to the Government that her appeal/revision be decided in accordance with law. She appeared before the Minister, who ordered the quashing of the termination order dated 04.07.1979 and issued necessary directions to defendant No.2 to issue appointment order to the plaintiff and to reinstate her forthwith. Ultimately, the order passed by the Minister was stayed on the report submitted by defendant no.3 on

26.05.1981 and thereafter on the representation made by the plaintiff, stay was vacated. In spite of that defendant No.3 did not issue any order of reinstatement of the plaintiff. She received a letter dated 21.06.1983 from defendant No.2 vide which she was intimated that her appeal had been rejected and she could not be taken back into service.

The defendants controverted the claim of the plaintiff by filing written statement on the ground that plaintiff remained absent from duty without any reason for sufficient time, which led to departmental enquiry culminating into termination of services after adopting proper procedure prescribed under service rules.

The learned trial Court after framing of issues arising out of the pleading of the parties, recording evidence and hearing learned counsel for the parties at length decreed the suit of the plaintiff, which on appeal preferred by the defendants, first appellate Court set aside the judgment of the trial Court and consequently, dismissed the suit of the plaintiff. The plaintiff is in regular second appeal before this Court.

I have heard Mr.S.S. Brar, Advocate for the appellant and Mr. Rajiv Kwatra, Additional Advocate General, Haryana for the respondents and have gone through the records of the case very carefully.

Learned counsel appearing on behalf of the appellant argued before me that the order dated 4.7.1979 of the Director, Technical Education, Haryana, Chandigarh (respondent No.3) removing the appellant from service w.e.f. 1.2.1977, the date from which she continuously remained absent from duty, was set aside in appeal by respondents on 29.4.1981 and the appellant was ordered to be reinstated but subsequently,

without any notice to the appellant, order dated 29.4.1981 passed in appeal has been cancelled vide order dated 8.3.1992. Learned counsel further contended that the order dated 29.4.1981 was never communicated to the appellant and therefore, the same could not have been set aside without hearing her and has prayed that appeal filed by the appellant be accepted. Judgment passed by the learned first appellate Court be set aside and that of the learned trial Court be upheld.

Learned counsel for the respondents argued that the order terminating the services of the appellant were passed on the basis of regular inquiry conducted against her on 4.7.1979. The same is Ex.P.15. It is contended that the Inquiry Officer appointed was not Shri D.R. Malhotra, Principal, Government Polytechnic, Sirsa but Shri H.K. Chawla, who was the successor of Shri D.R. Malhotra. It was further contended that Shri D.R. Malhotra the then Principal was appointed as the Presenting Officer to present the case before the Inquiry Officer and he was not the Inquiry Officer. It was contended that there was no bar in appointing the complainant as the Presenting Officer and the view gathered by the learned lower Court that the complainant himself was appointed the Inquiry Officer was not factually correct. It was claimed that impugned judgment of the first appellate Court was based on well reasoned findings and there are no reasons to set aside the same.

After having given my thoughtful consideration to the submissions made by the learned counsel for the parties and having perused the material available on the file, I am fully convinced that the appeal of the plaintiff-appellant is liable to be accepted in view of the proved and

admitted fact that in this case plaintiff-appellant was clearly deprived of being not heard before passing the order affecting adversely to her services.

I would like to deal all the points involved in the case which have arisen on the basis of pleadings, evidence as well as relevant provisions of law.

It is also noticed that penalty of removal from service was imposed upon the appellant under Rule 4 (IV) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter referred to as `the Rules'). It provides that for good and sufficient reasons, the penalties mentioned therein may be imposed upon a member of the service to whom rules are applicable. One of the penalties provided therein is removal from Government service which does not disqualify him or her ***from future service,*** Vide order dated **04-07-1979** passed by Director Technical Education, Haryana, Chandigarh (Ex- P15), the plaintiff-appellant was removed from service with effect from 01-02-1977, the day from which she was continuously found absent from duty, Vide Ex P16 , the Secretary to Govt. had passed the order dated 29-4-1981 and accepted the appeal filed by the plaintiff-appellant and order dated 04-07-1979 was quashed. Subsequently, without any notice to the plaintiff order dated 29-04-1981 passed in the appeal has been cancelled on the ground that the plaintiff-appellant after her reinstatement failed to pursue her case. This order is dated 08-03-1982. Main stress of the learned counsel for the appellant was that the order dated 29-04-1981 vide which the plaintiff was reinstated was never communicated to the plaintiff and that could not be set aside subsequently without hearing the plaintiff-appellant. There is not an iota of

evidence led by the defendants to show that the order dated 29-04-1981 was at any time communicated to the plaintiff-appellant. This fact is even admitted by the own witness examined by the defendants. Learned State counsel appearing for the defendants was fair enough to concede that as per record order dated 29-04-1981 was not conveyed to the plaintiff. Thus, in my view, order dated 08-03-1982 vide which the order dated 29-04-1981 was cancelled on the ground that the plaintiff failed to pursue her case is not sustainable in the eyes of law for the reason that the plaintiff had no notice as to whom the order dated 08.3.1982 came into existence affecting her services. Order dated 08.03.1982 cancelling the order dated 29-04-1981 was not appealable or revisable, so it was incumbent upon the authority at least to give an opportunity of proper hearing to the plaintiff-appellant who was likely to be adversely affected by the said order. Denial of opportunity of being heard to the plaintiff-appellant, the order dated 08-03-1982 is not sustainable in the eyes of law. The same is set aside being without basis. It has been proved on record that there is clear cut violation of procedure adopted in this case by the authorities culminating into removal of services of the plaintiff. She was dragged into litigation without any fault on her part and she after long battle able to quash the order of termination and even then she failed to get appointment letter and without her notice or being heard the order dated 29.04,1981 was withdrawn. Termination order was passed in the year 1979 and now more than 32 years have been passed, it would not be proper to open the case. In view of the above discussion, all the substantial questions of law noticed here-in-above stand answered accordingly.

Resultantly, this regular second appeal is allowed and the judgment and decree of the first appellate Court are set aside and that of the learned trial Court are upheld. Consequently, the suit of the plaintiff is decreed.

September 2, 2011. **(Mohinder Pal)**
hsp/p.singh **Judge**